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WTO Panel Finds U.S. Acted Prematurely on Bananas, But U.S. Duties Unaffected

The Office of the U.S. Trade Representative announced today that a dispute settlement panel of the World Trade Organization has concluded that the United States acted inconsistently with WTO rules when it changed import requirements for a period of six and one-half weeks last year before WTO dispute proceedings had concluded in the *Bananas* dispute. However, the panel rejected arguments by the European Union that U.S. tariffs now in place in the *Bananas* dispute violate those rules. The panel's ruling requires no action by the United States.

"While the panel concluded that we acted prematurely when we changed our Customs bonding requirements on EU goods last year, it rejected the EU claim that the tariffs now in place as a result of the *Bananas* dispute are not consistent with WTO procedural requirements. The EU would be better served if, instead of pursuing litigation, it addressed the source of the problem by bringing its WTO-inconsistent banana regime into compliance," said U.S. Trade Representative Charlene Barshefsky.

The EU's complaint addressed the U.S. announcement of March 3, 1999 that it would change bonding requirements on certain imports from EU countries. The United States took this step in order to ensure that it could, from that date, collect any duties that might be applied after a WTO arbitrator in the *Bananas* dispute completed a report on the level of harm to the U.S., which had been scheduled for March 2. Because the March 3 bonding requirements were a temporary measure in place only until WTO proceedings finished on April 19, 1999, the panel's finding requires no action by the United States.

While the panel found against U.S. bonding requirements, it rejected EU arguments that the United States violated WTO procedural rules by not requesting separate panels to determine whether, and by how much, the EU banana regime harmed U.S. exports. The EU had argued that because only one panel considered both questions, current U.S. duties on bananas are inconsistent with WTO rules. The EU has presented this argument to several WTO panels; not one has

accepted it.

Background

The United States Customs Service requires that importers post bonds to ensure that they pay all duties which may be due and meet other U.S. legal requirements. The U.S. action on March 3, 1999 consisted of changing those bonding requirements on certain imports from EU countries to ensure that higher duties could be collected following completion of WTO proceedings authorizing duty increases. Those proceedings were not completed until April 19, 1999.

The EU argued that the U.S. action discriminated against imports from EU countries and imposed charges in violation of various provisions of the General Agreement on Tariffs and Trade 1994. The EU also argued that the United States violated various provisions of the WTO Dispute Settlement Understanding by acting against the EU before WTO proceedings were complete. Finally, the EU argued that the United States and the *Bananas* arbitrator failed to follow procedural rules, rendering all U.S. *Bananas* tariffs WTO-inconsistent.

While the WTO panel agreed with the EU that the United States acted prematurely in changing bonding requirements on March 3, it rejected the EU argument that the tariffs now in place are WTO-inconsistent because of WTO procedural requirements. The panel supported the U.S. position on these procedural requirements, and disagreed with the EU that the WTO panel in *Bananas* was incorrect in applying them. These procedures prevent a non-implementing party such as the EU from engaging in endless litigation to delay compliance or the consequences of non-compliance.